

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PARNELL SEATON,

Petitioner,

Case No. 87-cv-73373

vs.

HON. GEORGE CARAM STEEH

JOHN JABE,

Respondent.

/

ORDER DENYING PETITIONER'S MOTION FOR CERTIFICATE
OF APPEALABILITY (DOC # 106) AND MOTION FOR LEAVE TO
PROCEED ON APPEAL IN FORMA PAUPERIS AS MOOT (DOC. # 104)

On April 17, 2013, this court denied petitioner Parnell Seaton's motion under Fed. R. Civ. P. 60(b)(6) for relief from the 1991 denial of his petition for *habeas corpus*. On May 13, 2013, Seaton filed a notice of appeal and moved for both a certificate of appealability and permission to appeal *in forma pauperis*.

An unsuccessful movant for relief from judgment under Rule 60(b) must obtain a certificate of appealability under 28 U.S.C. § 2253 before his appeal of the denial of the motion can be heard. United States v. Hardin, 481 F.3d 924, 926 (6th Cir. 2007). Unless a district or circuit court issues a certificate of appealability, an appeal may not be taken to the court of appeals from a final order in a proceeding under § 2254. 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Seaton's motion was denied as both untimely and for lack of merit, and the

court finds he has failed to make a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is hereby DENIED as to this court's April 17, 2013 order denying Seaton's motion for relief from judgment. Seaton's motion for leave to proceed on appeal *in forma pauperis* is hereby DENIED AS MOOT for the reason that an appeal cannot be taken absent the issuance of a certificate of appealability.

IT IS SO ORDERED.

Dated: May 29, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 29, 2013, by electronic and/or ordinary mail and also on Parnell Seaton #159030, Bellamy Creek Correctional Facility, 1727 West Bluewater Highway, Ionia, MI 48846.

s/Barbara Radke
Deputy Clerk